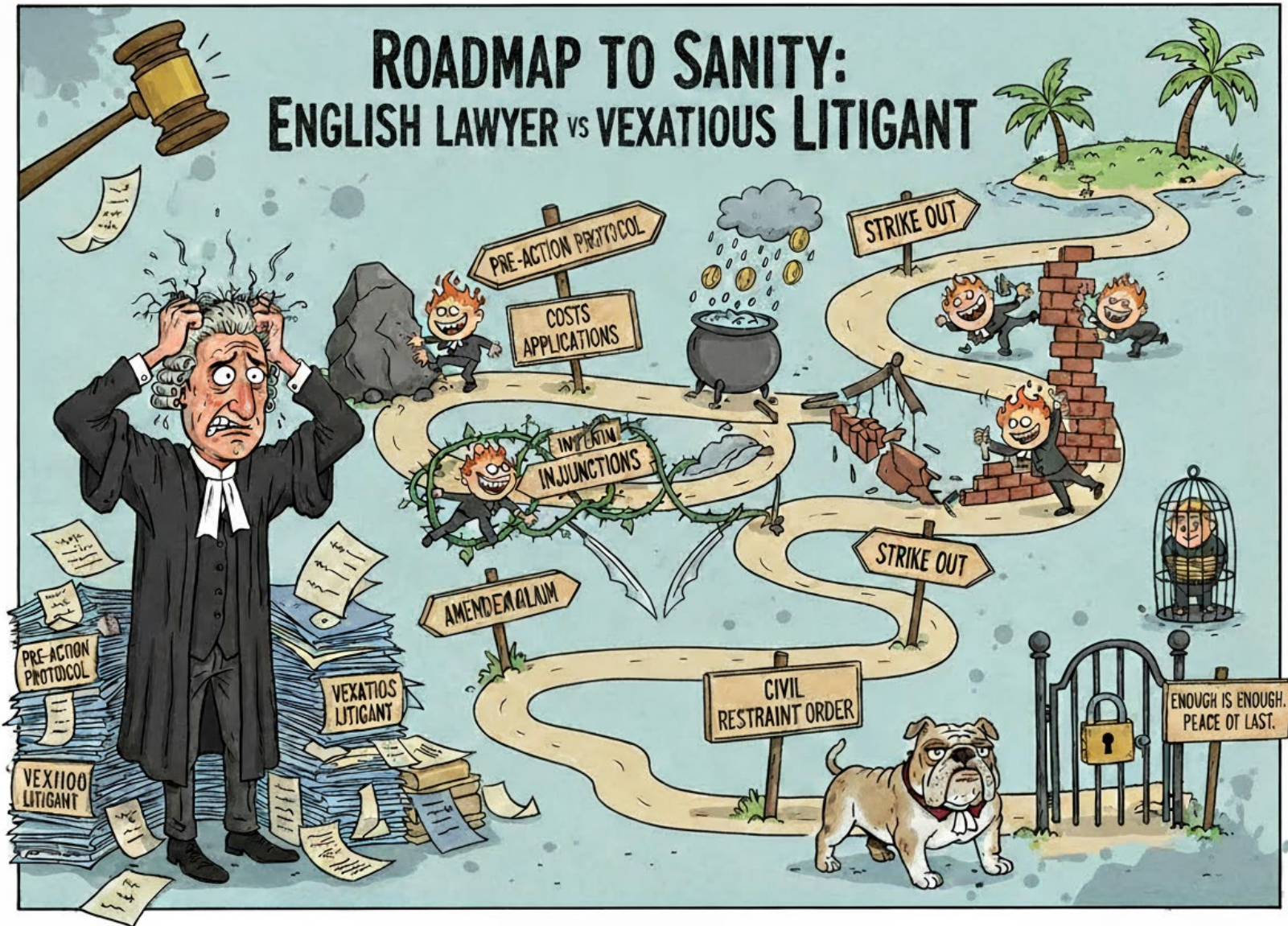


From frustration to finality: A tactical guide to Civil Restraint Orders.



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Today's Roadmap: A Toolkit for Dealing with Vexatious Litigants

De-escalation & Self-Preservation:

First principles: Protect yourself and your client.

Understanding the Drivers:

Why do they do it? Moving beyond the legal to the psychological.

The Foundational Powers:

Inherent Jurisdiction & the "Totally Without Merit" finding.

The CRO Toolkit:

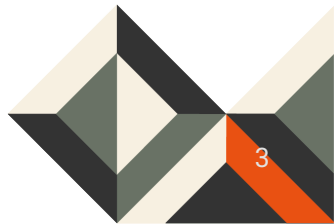
Limited, Extended, and General CROs: Choosing the right tool.

Advanced Tactics:

Targeting the "Real Party" behind the litigation.

The Practical Playbook:

A step-by-step workflow from red flags to a final order.



De-escalation



THE LAWYER'S "DE-ESCALATION" STRATEGY:

De-escalation

The First Decision: Fortification or De-escalation?

The Instinct: Build a Fortress

- React with heavy procedural weapons.
- Engage on every front.
- Focus on winning the battle.

The Strategy: De-escalate & Contain

- Understand the opponent's drivers.
- Control the engagement.
- Focus on ending the war.
- Have the tools, but hope you never have to use them.



The 'Why' - Understanding the Drivers

Core Truth: If you could reason with them, they wouldn't be vexatious.

Common Psychological Drivers:

- **The Crusader:** Deep-seated belief in a conspiracy; an unshakeable sense of injustice.
- **The Process Victim:** The litigation itself has become the grievance, creating a cycle of retaliation.
- **The Performer:** Uses the court to ventilate, seek attention, or exert control and power.
- **The Ego-Driven:** An inability to accept being wrong, regardless of judicial findings.



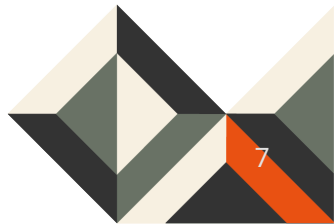
Practical Steps & Self-Preservation

DE-ESCALATION TACTICS (Outward-Facing)

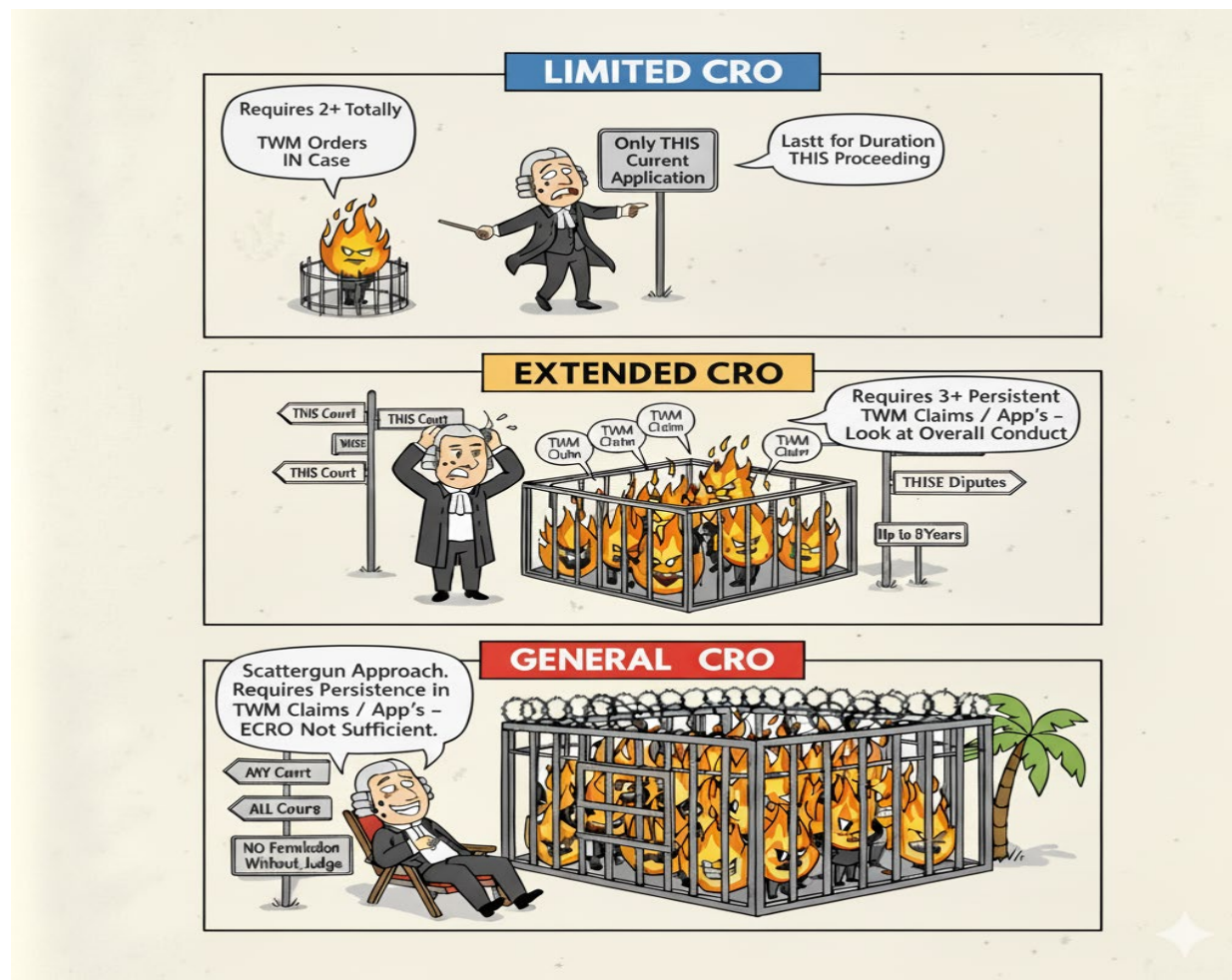
- **Limit Engagement:** Keep communication brief, formal, and strictly on-point.
- **Set Firm Boundaries:** "Correspondence will only be addressed during office hours."
- **Don't Fuel the Fire:** Avoid justifying or defending. State your legal position once and disengage from debate.
- **Acknowledge Without Validating:** "Your position is noted." This shows they are heard, without agreeing with them.

SELF-PRESERVATION TACTICS (Inward-Facing)

- **Create a Separate Email Account:** Or use inbox rules to isolate their correspondence.
- **Rotate the Team:** Avoid one person bearing the full brunt of the conflict.
- **Internal Debriefs:** Create a safe space for your team to discuss the case without emotional attachment.
- **Maintain Professional Distance:** Remind yourself and your client that the attacks are a symptom, not a personal verdict.



Civil Restraining Orders – A Symptomatic Approach



Inherent Jurisdiction

The CPR's Civil Restraint Order (CRO) regime does not apply to tribunals (e.g., Employment Tribunal, First-tier Tribunal). This creates a jurisdictional gap, as tribunals often lack the power to make their own CROs to stop vexatious litigants.

The solution is the High Court's **inherent jurisdiction** to protect its own processes and assist inferior courts and tribunals.

Key Authority: *The Law Society v Otopo* [2011]

The High Court confirmed it can grant a CRO to restrain a litigant from bringing vexatious proceedings in a tribunal, especially where the tribunal cannot protect itself from abuse.

A Case Study in Action: *Fernie v Burton Waters* [2025] EWHC 2207 (KB)

The Forum: A litigant (driven by his father as the "real party") brought a massive challenge in the **First-tier Tribunal (FTT)**, auditing £700k of costs over four years.

The Conduct: The FTT proceedings saw dozens of abusive applications, including allegations of fraud and contempt, plus reports to the SRA, BSB, police, and Parliament.

The Trigger: After the FTT claim ultimately failed (with a £75k (on-account costs

order), the litigant issued separate, related proceedings in the County Court and elsewhere. Across both forums, **eight 'Totally Without Merit' (TWM) findings** were accumulated.

The Outcome: We applied to the High Court and obtained a **General CRO** against both the litigant and his father.

Crucially, using the *Otopo* principle, the GCRO was extended to **explicitly prohibit them from issuing any further proceedings in the FTT.**



Totally Without Merit

1. What is a TWM & Why Does It Matter?

The Test: Not just weak, it's "**bound to fail**" – no rational argument for success (*R v Grace*).

The Power: It's **conclusive**. A later court won't re-open it.

The Purpose: Each TWM is a **foundational building block** for your future CRO application.

2. How to Collect TWMs

The CPR Gateways: The court *must* consider a CRO when it:

Strikes out a claim. (CPR 3.4(6)).

Dismisses an application. (CPR 23.12).

Refuses permission to appeal. (CPR 52.20).

Proactive Tip: If you win on the papers but there's no TWM certificate, **write to the court and ask for one!** Don't let a TWM opportunity slip by.

3. The Human Factor: The Strategic Solution

The Problem: Judges can be reluctant to make the first TWM finding, fearing they'll get swept up in the drama of a vexatious litigant.

The Solution: Suggest the judge refer the matter to the **Designated Civil Judge (DCJ)**. DCJs are experienced with these issues and more inclined to step in. It creates a single, informed point of contact for a litigant issuing claims "left, right, and centre." It saves you from re-telling the whole saga every single time.

The First Step on the Ladder: The Limited CRO (LCRO)

The **narrowest and least restrictive** type of Civil Restraint Order.

Designed to stop a litigant from making repeated, baseless applications **within a single, ongoing court case**.

The Threshold Test: CPR PD 3C.2.1

The court can make an LCRO where a party has made **two or more applications** that are certified as "**Totally Without Merit**" (TWM).

The applications must be made within the same set of proceedings.

How it Works in Practice

The Restraint: The litigant is restrained from making any further applications **in those specific proceedings** without first obtaining permission from a judge (*CPR 2.3(1)(a)* & *PD 3C.2*).

The "Filter": To make an application, the party must serve a notice on the opponent and then apply in writing to the court. The application is decided on paper without a hearing (*PD 3C.2.4 - 2.6*).

The Consequence: Any application made in breach of the LCRO is **automatically dismissed** without the need for the other party to respond (*PD 3C.2.3*).

Duration: The LCRO remains in effect for the **duration of the proceedings** in which it is made, unless the court orders otherwise (*PD 3C.2.9*).

The Next Level of Control: The Extended CRO (ECRO)

A more powerful and wider-ranging order than an LCRO.

Designed to stop a litigant who **persistently** brings hopeless claims or applications related to the **same underlying subject matter**, often across different but related proceedings.

The Threshold Test: CPR PD 3C.3.1

The court can make an ECRO where a party has "**persistently**" issued **claims or made applications** that are certified as "**Totally Without Merit**" (TWM).

"Persistently" has been established in case law to mean a bare minimum of three or more TWM findings. (*Courtman v Ludlam*; *Sartipy v Tigris Industries*)

How it Works in Practice

The Restraint: The litigant is restrained from issuing claims or making applications "concerning any matter involving or relating to or touching upon or leading to the proceedings in which the order is made." (CPR 2.3(1)(b) & PD 3C.3.2).

The Scope: The key difference from an LCRO. The restraint is **not confined to a single case**. It covers the entire subject matter, preventing the litigant from trying to "re-package" their grievance in new proceedings against the same or even different parties.

The "Filter": The permission mechanism is the same: a written application to a designated judge, decided on paper (PD 3C.3.4 - 3.6).

Duration & Authority: An ECRO is made for a specified period, **not exceeding three years**, and can only be made by a High Court Judge, Court of Appeal Judge, or Designated Civil Judge (PD 3C.3.7).

The Ultimate Protection: The General CRO (GCRO)

The most powerful and draconian type of Civil Restraint Order.

Reserved for the "very rare" type of litigant who persistently abuses the court system across varied and numerous matters - the "scattergun" litigant.

The Threshold Test: CPR PD 3C.4.1

A GCRO can be made where a party "persists" in issuing claims or applications that are TWM, AND

The circumstances are such that an Extended Civil Restraint Order (ECRO) would not be sufficient or appropriate.

You must demonstrate why a subject-matter-specific ECRO is not enough to stop the abuse.

How it Works in Practice

The Restraint: The litigant is restrained from issuing any claim or making any application in the specified courts (e.g., High Court and County Court) on any subject matter without permission (*CPR 2.3(1)(c) & PD 3C.4.2*).

The Scope: This is the key distinction. The restraint is total. It is not tied to a specific case or subject. It targets the litigant's entire use of the court system.

The Justification: A GCRO is appropriate where a litigant adopts a "scattergun approach to litigation on a number of different grievances," making it impossible to contain their behaviour with a narrower ECRO (*R (Kumar) v Secretary of State*).

Duration & Authority: A GCRO is made for a specified period, not exceeding three years, and can only be made by a High Court Judge, Court of Appeal Judge, or Designated Civil Judge (*PD 3C.4.9*).

Targeting the Puppet Master: CROs Against the "Real Party"

The CPR (PD 3C) refers to a "party," but case law confirms this is interpreted broadly to prevent abuse. The court's ability to make CROs would be "seriously undermined" if it only focused on the named claimant (*CFC 26 Ltd v Brown Shipley*).

The Principle: The order can be made against the person who is the true "driving force" or "real party" behind the litigation, even if they are a non-party.

Key Case: *Sartipy v Tigris Industries* – "The 'real party' concept... must extend to a person who is controlling the conduct of the proceedings and who has a significant interest in their outcome."

2. The Parallel: Third-Party Costs Orders (TPCOs)

The logic for a "real party" CRO is almost identical to that for a TPCO under Section 51 of the Senior Courts Act 1981. The "single question" for a TPCO is whether it is just to make the order because the non-party is, in reality, the person running the show (*Excalibur Ventures*). If someone is the "real party" enough to be liable for the costs, they are the "real party" enough to be subject to a restraint order.

3. The Test: What to Look For (The "Puppet Master" Checklist)

Control: Who is the "controlling mind"?

Who drafts the pleadings, witness statements, and correspondence? (Check the metadata!). Who sends the emails and liaises with counsel? Does the named claimant seem to have little or no understanding of their own case? (As seen in *Fernie*).

Benefit & Motive: Who is the "primary beneficiary"? This isn't just financial. It's often about vindicating a personal grievance or a "deeply-held conspiratorial theory."

4. Practical Hurdles & How to Overcome Them

The Evidentiary Challenge: You need compelling, concrete evidence of control. Build a detailed file showing the pattern of conduct, communication logs, and any disconnect between the named claimant and the "real party."

The Procedural Step: You cannot get a CRO against a non-party out of the blue. You **must first apply to join them to the proceedings** under CPR 19, specifically for the purpose of the CRO application. This gives them notice and the right to be heard.

From Red Flags to a CRO

Phase 1: Identification & Early Warning Signs

Check the Lists: Your first port of call. Check the official HMCTS website. *If they're on a list, your job is much simpler - ensure they've complied.*

Spot the "Red Flags": If they aren't on a list, look for common behaviours:

Obsessive Re-litigation: Are they trying to re-argue points that have already been decided?

"Scattergun" Approach: Are they adding new, unrelated allegations or suing lawyers, judges, and third parties?

Disproportionate Conduct: Are their communications voluminous, aggressive, or designed to harass and incur costs?

Circumvention: Are they using family members or new corporate entities to bring claims (the "real party" issue)?

Phase 2: Building the Evidentiary Foundation

Document Everything: Create a meticulous chronology of their conduct. This is the single most important step. Track every claim, application, appeal, and piece of

correspondence.

Secure "Totally Without Merit" (TWM) Findings: This is your primary objective.

At every strike-out, summary judgment, or dismissed appeal hearing, explicitly ask the judge to certify the application/claim as "Totally Without Merit."

Remind the judge of their duty under the CPR (3.4, 23.12) to consider a CRO at this point.

If you get a paper dismissal without a TWM certificate, write to the court immediately to request one be added. Don't let it slide.

Cont.....

From Red Flags to a CRO (Part 2)

Phase 3: The Application

Hit the Threshold: Once you have documented the required number of TWM findings (2 for an LCRO, 3+ for an ECRO/GCRO), you have the jurisdiction to apply.

Choose the Right Order: Assess the litigant's behaviour to determine the proportionate remedy:

Is the problem contained within one case? -> LCRO

Is it a persistent obsession with one subject? -> ECRO

Is it a "scattergun" attack on multiple fronts? -> GCRO

Draft the Application & Evidence:

Prepare a Part 23 Application Notice specifying the CRO sought.

Draft a clear witness statement exhibiting your detailed chronology and, most importantly, all the court orders containing the TWM findings.

Explain why a lesser order would be insufficient (if seeking an ECRO or GCRO).

If targeting the "real party" or seeking to include tribunals, set out the evidence and legal basis clearly

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